

### **SECTION 3**

#### **AWARD AND EXECUTION OF CONTRACT**

3-1.01	Award of Contract
3-1.02	Contract Bonds
3-1.02A	Faithful Performance Bond
3-1.02B	Contractor's Payment Bond
3-1.03	Execution of Contract
3-1.04	Failure to Execute Contract
3-1.05	Return of Proposal Guaranties
3-1.06	Notification of Surety and Insurance Companies
3-1.07	Damages for Collusion

## SECTION 3

## AWARD AND EXECUTION OF CONTRACT

**3-1.01 Award of Contract.** - The City, in its sole discretion, reserves the right to reject any and all proposals.

The award of the contract, if it is awarded, will be to the lowest responsive and responsible bidder whose proposal complies with all the requirements prescribed. If 2 or more bids are the same and lowest, the City may accept either bid it chooses in its sole discretion. Such award, if made, will be made within 90 days after the opening of the proposals. If the lowest responsive bidder refuses or fails to execute the contract, the City may award the contract to the second lowest responsive and responsible bidder. Such award, if made, will be made within 105 days after the opening of the proposals. If the second lowest responsive bidder refuses or fails to execute the contract, the City may award the contract to the third lowest responsive and responsible bidder. Such award, if made, will be made within 120 days after the opening of the proposals. The Department of Public Works may proceed in like manner until the Director either finds a responsible and responsive bidder willing to be awarded the contract or determines that it is not in the best interest of the City to proceed further. The periods of time specified above within which the award of contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the Director and the bidder concerned.

All bids will be compared on the basis of the Engineer's Estimate of the quantities of work to be done.

**3-1.02 Contract Bonds.** - Except as provided by Section 14.04.440 and Section 14.04.460 of the San Jose municipal code, the successful bidder shall, at the time of executing the contract, file the following bonds with the City. Bonds shall be in the same form as those bound with the special provisions.

**3-1.02A Faithful Performance Bond.** - The faithful performance bond shall be a bond in the penal sum of at least 100 percent of the contract price, secured by 2 or more sufficient sureties approved by the Director of Finance or by an admitted surety company, conditioned upon the Contractor's faithful performance of the contract terms within the contract time. In addition, if the Contractor fails to complete the contract within the time fixed in the contract, or such extension thereof as may be allowed by the City, the contract may, by that fact, be terminated for cause and the City shall not thereafter pay or allow the Contractor any further compensation for any work done by the Contractor under said contract, and the Contractor or their sureties shall be liable to the City for all loss or damage which City may suffer by reason of the Contractor's failure to complete their contract within such time. The time limit in the contract for the completion of the work may be extended by the City in accordance with the provisions of Section 8-1.07 "Liquidated Damages."

**3-1.02B Contractor's Payment Bond.** - The payment bond shall be a good and sufficient bond approved by the City in an amount not less than 100 percent of the contract price. To be approved, bond must provide that if the Contractor or their subcontractor fails to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment

Insurance Code with respect to the work or labor contracted to be done and performed by any claimant, then the surety or sureties will pay for same, in an amount not exceeding the amount of the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee to be fixed by the court. To be approved, the bond must be issued by an admitted surety and shall, by its term, inure to the benefit of any of the persons named in Section 3181 of the California Civil Code, to give a right of action to such persons or their assigns in any suit brought upon the bond, including the right of action to recover on the bond, in any suit brought to foreclose the liens provided for in Title 15, Part 4, Division 3 of the California Civil Code or in a separate suit brought on this bond. The Bond shall otherwise comply with all of the provisions of Title 15, Part 4, Division 3 of the California Civil Code.

Unless a Contractor's Payment Bond is filed and approved as herein provided, no claim in favor of the Contractor arising under the contract shall be audited, allowed or paid by the City. Any persons named in Section 3181 of the Civil Code of the State of California, shall receive payment of their respective claims in the manner provided by Chapter 4, Part 4, Division 3, Title 15 of the Civil Code of the State of California upon having complied with the conditions of Section 3183 of the Civil Code.

**3-1.03 Execution of Contract.** - The contract shall be signed by the successful bidder and returned, together with the contract bonds and insurance, within 8 days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice that the contract has been awarded.

**3-1.04 Failure to Execute Contract.** - Failure of a responsive and responsible bidder to execute the contract and file acceptable bonds and insurance as provided herein within 8 days, not including Saturdays, Sundays and legal holidays, after such bidder has received notice that the contract has been awarded to them shall be just cause in the City's sole discretion for voiding the award and the forfeiture of the proposal guaranty. The successful bidder may file with the City a written notice, signed by the bidder or their authorized representative, specifying that the bidder will refuse to execute the contract if presented to the bidder. The filing of such notice shall have the same force and effect as the failure of the bidder to execute the contract and furnish acceptable bonds within the time hereinbefore prescribed.

**3-1.05 Return of Proposal Guaranties.** - Until the award and execution by the Contractor of the contract, the Engineer shall hold the proposal guarantees of the three lowest bidders. Any other bid proposal guarantees may be released by the Engineer when the Engineer determines in the Engineer's sole discretion that the best interest of the City would not be served by retaining such proposal guarantees.

**3-1.06 Notification of Surety and Insurance Companies.** - The surety companies and other signers of any of the above mentioned bonds, and all insurance companies, shall familiarize themselves with all of the conditions and provisions of this contract, and they waive the right of special notification of any change or modification of this contract or of extension of time, or of decreased or increased work, or of the cancellation of the contract, or of any other act or acts by the City or its authorized agents, under the terms of this contract, and failure to notify the

sureties or insurance companies of changes shall not relieve the sureties or insurance companies of their obligation under this contract.

**3-1.07 Damages for Collusion.** - If at any time it is found that the person, firm, or corporation to whom the contract has been awarded, in presenting any bid or bids, colluded with any other party or parties, then the contract awarded may be declared by the City to be null and void, and the Contractor and their sureties shall be liable to the City for all loss or damage which the City may have suffered as a result of such collusion, and the City may re-advertise anew for bids for said work.

END OF SECTION